## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

## **DOCKET NO. 3:04-CR-257-1-FDW**

UNITED STATES OF AMERICA	)	
	)	
VS.	)	
	)	ORDER
MARGARET SMITH,	)	
	)	
Defendant.	)	
	)	

THIS MATTER is before the Court upon motion of the Defendant for a Reduction in Sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. No. 89) and Motion to Compel (Doc. No. 91).

Defendant bases her motion on Amendment 709 to the United States Sentencing Guidelines, effective 1 November 2007, which altered the rules for counting multiple prior sentences and certain misdemeanor and petty offenses for purposes of calculating a defendant's criminal history category. However, Amendment 709 is not listed in U.S.S.G. § 1B1.10(c) and therefore does not apply retroactively. See U.S.S.G. § 1B1.10 Application Note 1(A) ("Eligibility for consideration under 18 U.S.C. § 3582(c)(2) is triggered only by an amendment listed in subsection (c) that lowers the applicable guideline range."). Defendant's motion must therefore be DENIED.

IT IS SO ORDERED.

Signed: December 19, 2008

Frank D. Whitney

United States District Judge